

***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

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W.P.No.23597 of 2005

% 3-01-2006

Between:

M/s.S.S.(Sampathy Sharma) Educational Society,
Hyderabad & another

...Petitioners

And

Government of A.P., School Education Department,
Rep.by its Secretary, Hyderabad & others.

...Respondents

! COUNSEL FOR PETITIONERS: Mr.T.Surya Satish

^ COUNSEL FOR RESPONDENT No.1:G.P.for Education RESPONDENT No.2:
Mr.S.Niranjan Reddy RESPONDENT No.3: Mr.S.Srinivas Reddy

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.23597 OF 2005

Dated 3rd January 2006

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.23597 OF 2005

ORDER:

Late S.P.Sampathy brought about an Educational Society and established several

schools, in and around the city of Hyderabad. However, he did not anticipate that his entrepreneurship is going to land his family members in trouble and disputes.

During his life time, S.P. Sampathy promoted and brought into existence M/s. Siva Sivani Educational Society, at Kompally, Ranga Reddy District. The school established by the Society acquired fairly good amount of reputation. However, with the passage of time, disputes arose among the members of the Managing Committee, who are mostly the family members. A compromise decree came to be passed in O.P.No.479 of 1997, providing for the arrangement indicated therein. The present dispute relates to Siva Sivani International School, which has since been renamed, as Sivani, The International School, the second petitioner herein. Under the compromise decree, it is said to have been allotted to the first petitioner society.

The petitioners approached the Regional Joint Director of School Education, Hyderabad (for short "the RJD"), to accord approval for change of name of Siva Sivani International School, and for shifting of the school to a different place. The RJD accorded permission for both these steps, through his proceedings dated 29.7.2004. The institution was under the franchise of Council for Indian School Certification Examination, New Delhi (for short "the Council"). The Council addressed letter dated 17.9.2004, with an intention to know the views of the Government of Andhra Pradesh, first respondent herein, regarding the second petitioner school, in the light of letter dated 29.7.2004, issued by the RJD, and the representation received from the first petitioner institution.

The first respondent issued proceedings dated 27.1.2005, cancelling the proceedings of the RJD, dated 29.7.2004.

Petitioners filed W.P.No.2566 of 2005, challenging the same. The writ petition was disposed of on 10.3.2005, challenging the proceedings, dated 27.1.2005, addressed by the first respondent. The matter was directed to be dealt with afresh, duly giving opportunity to all the concerned parties.

On remand, three different parties are said to have appeared before the first respondent. First petitioner is the society, in whose favour the RJD issued proceedings dated 29.7.2004. The second respondent is said to be the society, which transferred the institution in favour of the first petitioner. Another society, the third respondent herein, is the principal objector, to the transfer as well as to the proceedings issued by the RJD.

After the matter was remanded, the first respondent passed an order, dated 21.10.2005, holding that the transfer of the institution in favour of the first petitioner, is contrary to the provisions of the A.P. Education Act, for short "the Act", and the Rules made thereunder. He has also taken the view that the approval of the transfer can be considered, if only the necessary relaxation, as provided for under rule 10 (23), is granted.

Petitioners challenge the orders of the first respondent contained in Memo dated 21.10.2005, on several grounds. It is urged that the issue relating to transfer of their institution was never the subject matter of the proceedings dated 29.7.2004, issued by the RJD. It is also pleaded that having regard to Sections 29 and 33-A of the Act, no permission was necessary from any authority, for the transfer of the second petitioner institution.

Learned counsel for the petitioners submits that out of the two points framed by the first respondent, the first point was totally outside the scope of the proceedings, and the second point was answered, by applying the parameters relating to the first one. He contends that apart from making oral submissions, written arguments were submitted on behalf of the petitioners, with reference to Sections 28 and 33-A of the Act, and still, the first respondent did not advert to the same.

Learned Government Pleader for School Education, on the other hand, submits that the petitioners did not obtain prior permission of the competent authority, before the transfer was affected. He submits that the procedure prescribed under G.O.Ms.No.1, dated 1.1.1994, is very much applicable, and in fact, the petitioners and the second respondent have submitted an application for relaxation of the rules.

The second respondent had, in a way, supported the case of the petitioner, and made a reference to W.P.No.23132 of 2005 filed by it, against the very impugned order. On behalf of respondents 3 and 4, their respective counsel have advanced arguments, supporting the impugned order. They plead that the procedure prescribed under Chapter VI-A of the Act, does not apply to the second petitioner institution, and its transfer, without prior permission of the competent authority, was illegal.

The impugned order dated 21.10.2005 has fallen for consideration before this Court in W.P.No.23132 of 2005, filed by the second respondent, in a different context. The plea put forward by it was that the first respondent ought to have considered the application filed by the second respondent, for grant of relaxation of the rules contained in G.O.Ms.No.1, dated 1.1.1994, in terms of Rule 21 of the Rules. The petitioners herein were not made parties thereto. Therefore, the writ petition was disposed of, with a direction to the first respondent herein, to consider the application of the second respondent herein and pass appropriate orders, in the matter of relaxation of the rules. The grievance of the petitioners herein, who are the transferees of the school, is different. According to them, the second petitioner is a recognized institution, as defined under Section 33-A of the Act, and the restriction contained in Section 28, on the alienation, does not apply to it. Several subsidiary contentions, touching on this aspect, were also made.

After narrating the relevant facts that gave rise to the adjudication before him, the first respondent framed the following issues, as falling for his consideration:

1. Whether the transfer of the school from one management to another management is proper as per the provisions of G.O.Ms.No.1, Education (PS-2) Department, dt.1.1.1994.
2. Whether the R.J.D., Hyderabad is competent to issue permission to change the nomenclature and shifting of building.

In this context, it needs to be noticed that the occasion for the first respondent, to deal with this entire matter arose, in the light of his receiving a letter from the

Council, seeking the views of the former, on the proceedings dated 29.7.2004, issued by the RJD. The proceedings of the RJD, dated 29.7.2004, read as under:

“In the circumstances reported by the D.E.O., Hyderabad District in the reference 1st cited and as per powers delegated in G.O.Ms.No.203/Edn. (P.S.2) Dept., dt. 4.7.1998, the R.J.D.S.E., Hyderabad is pleased to permit the management to change the nomenclature of the school presently Siva Sivani Public School to Sivani the International School and also shift the building from the present premises to Road No.4 at Banjara Hills, Hyderabad, and as per the request of the Correspondent N.O.C. is not required.”

From this, it is evident that the RJD was dealing with the request of the petitioners herein, to accord permission to change the nomenclature, and to shift the school from one premises to another. No transaction of transfer fell for consideration.

In view of the change of nomenclature and shifting of the school, the Council, which gave its franchise to the second petitioner, addressed letter, dated 17.9.2004 to the first respondent, soliciting its views. The relevant portion reads as under:

“We have been receiving letters and court notices from some of the family members of the management of the school, alleging irregularities in the management of the said institution. The Council would be highly obliged, if you would kindly look into the case and let us know the position of the Government of Andhra Pradesh regarding this school.”

In this background of the facts, the transfer of the school from one management to another was totally out side the scope of the subject matter, pending before the first respondent. None of the affected parties have approached the first respondent, complaining of any irregularity, or illegality, in the matter of transfer. In that view of the matter, the first issue framed by the first respondent was out side the scope of the proceedings before him.

Apart from this, the petitioners made extensive submissions, narrating as to how the transfer of the second petitioner institution, in favour of the first petitioner, did not require any prior permission. Reference was made to various provisions of the Act, particularly Sections 28 and 33-A thereof. The first respondent, however, did not deal with the said contentions in the impugned order.

The second issue framed by the first respondent did arise for consideration, in the context of the letter received by him from the Council. A perusal of the impugned order discloses that in forming an opinion, as to whether the proceedings dated 29.7.2004, issued by the RJD, are legal and valid, the first respondent applied the provisions of G.O.Ms.No.1, dated 1.1.1994, that too, those relating to the transfer of institutions. Change of nomenclature and shifting of the school, are governed by different sets of rules. Learned counsel for the petitioners has drawn the attention of this Court to the rules contained in G.O.Ms.No.189, dated 30.7.1987. The parameters for according permission for change of nomenclature of the institution, or according permission for shifting from one place to another, are totally different from those that deal with grant of permission for transfer of the institution, as a whole. Even where the examination of grant of permission for transfer of the assets of the institution becomes necessary, the contention advanced on behalf of the parties, on the touchstone of Section 33-A of the Act, ought to have been dealt with. Obviously, on account of the stipulation of a very short time by this Court for disposal of the matter, the first respondent does not appear to have bestowed his attention to the various provisions referred to above. The matter needs reconsideration.

Hence, the writ petition is allowed, and the Memo dated 21.10.2005, passed by the first respondent is set aside. The matter is directed to be reconsidered, in the light of the observations made in the preceding paragraphs. There shall be no order as to costs.

(L.NARASIMHA REDDY, J)

Dt. 3rd January 2006

Note: L.R.Copies be marked.

(B/o)

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